

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isabelle James	Team: Squad #9	CCRB Case #: 201700136	<input type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury		
Incident Date(s) Sunday, 01/01/2017 12:30 AM	Location of Incident: § 87(2)(b)		Precinct: 73	18 Mo. SOL 7/1/2018	EO SOL 7/1/2018
Date/Time CV Reported Fri, 01/06/2017 10:51 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 01/06/2017 10:51 AM		

[illegible]

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DI Jesse Lance	00000	923789	PSA 2
2. LT Omar Birchwood	00000	945512	PA UPTU
3. LT Michael Raimo	00000	914921	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Fontana	15313	956654	PSA 2
2. POM Ryan Jaffe	11329	954968	PSA 2
3. POM Jonathan Frith	07626	953885	PSA 2
4. POM Jason Gammello	31832	954842	PSA 2
5. POM Matthew Byrnes	25380	953714	PSA 2
6. POM Anthony Prisinzano	17301	907097	PSA 2
7. POM Xavier Galloza	06116	948996	PSA 2
8. SGT Thomas Turner	02747	926232	PSA 2
9. POF Roni Jenkins	01589	952893	PSA 4
10. POM Jonathan Suero	23460	951308	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
11. POM Jonathan Epps	17769	945694	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.LT Omar Birchwood	Abuse: Lieutenant Omar Birchwood entered § 87(2)(b) in Brooklyn.	
B.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the stop of § 87(2)(b) and § 87(2)(b)	
C.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the frisk of § 87(2)(b) and § 87(2)(b)	
D.DI Jesse Lance	Abuse: Deputy Inspector Jesse Lance entered and searched § 87(2)(b) in Brooklyn.	
E.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the stop of § 87(2)(b)	
F.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the search of § 87(2)(b)	
G.LT Michael Raimo	Abuse: Lieutenant Michael Raimo stopped § 87(2)(b)	
H.LT Michael Raimo	Abuse: Lieutenant Michael Raimo frisked § 87(2)(b)	
I.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the stop of § 87(2)(b) and § 87(2)(b)	
J.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the frisk of § 87(2)(b) and § 87(2)(b)	
K.LT Michael Raimo	Abuse: Lieutenant Michael Raimo authorized the search of § 87(2)(b) and § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On January 6, 2017, § 87(2)(b) filed this complaint with the CCRB as a walk-in complainant.

On January 1, 2017, § 87(2)(b) filed a complaint regarding this incident with IAB. On January 9, 2017, the CCRB received § 87(2)(b)'s complaint via IAB-log #17-0327. On January 10, 2017, it was determined that § 87(2)(b) was a victim in this case and case number 201700175 was closed as a duplicate complaint.

On January 1, 2017, at approximately 12:30 a.m., an unknown number of gunshots were fired outside of § 87(2)(b) in Brooklyn. At the time the shots were fired, § 87(2)(b) and her family and friends were inside of § 87(2)(b)'s apartment. § 87(2)(b) was celebrating the New Year and commemorating the anniversary of § 87(2)(b)'s nephew's death. More than 20 people were inside of § 87(2)(b)'s apartment. § 87(2)(b) § 87(2)(b)'s son, § 87(2)(b) and a few of his friends, including § 87(2)(b) § 87(2)(b) and § 87(2)(b) were in the lobby of § 87(2)(b) drinking alcohol and smoking cigarettes. They saw three officers, identified via the investigation as Lieutenant Omar Birchwood (who at the time of the incident was a sergeant assigned to PSA 2), Police Officer Ryan Jaffe, and Police Officer Johnathan Frith of Police Service Area 2, enter into the lobby and, upon seeing the officers, ran back into § 87(2)(b)'s apartment. The officers came to the door of § 87(2)(b) and asked what the individuals who had just been in the lobby were doing. § 87(2)(b) and his friends told the officers they had been drinking and the officers then left the building.

Approximately 40 minutes later, there was a knock at § 87(2)(b)'s door and multiple officers were standing in the hallway outside the entrance to her apartment. Two officers, identified as Lt. Birchwood and Deputy Inspector Lance of Police Service Area 2, spoke to § 87(2)(b) and the other family members at the door. Immediately after the occupants of the apartment opened the door to speak to the officers, Lt. Birchwood placed his foot across the threshold of the door jam (**Allegation A**). The officers told § 87(2)(b) that § 87(2)(e), § 87(2)(b) and asked for § 87(2)(b)'s consent to enter and search her apartment. The officers mentioned that one of the individuals with a firearm was wearing a green jacket. § 87(2)(b) refused to allow the officers to enter and search her apartment. At that time, a group of male individuals, identified as § 87(2)(b) and § 87(2)(b) exited the apartment and were stopped and frisked by PO Matthew Byrnes, Lt. Raimo, and other officers of PSA 2 (**Allegation B** and **Allegation C**). § 87(2)(b) § 87(2)(b) and § 87(2)(b) continued to speak to the officers for approximately ten minutes at the door. During this conversation, Lt. Birchwood and Deputy Inspector Lance made repeated requests to enter § 87(2)(b)'s apartment; however, consent to enter the apartment was never granted to the officers.

At some point in the conversation, the officers learned from § 87(2)(b) that there were children inside the apartment. Deputy Inspector Lance requested to see the children multiple times; however, no individual inside the apartment produced the children. Soon after, § 87(2)(b)

attempted to close the door on Lt. Birchwood and Lt. Birchwood pushed the door open and entered the apartment. He was followed by Deputy Inspector Lance, Lt. Raimo, PO Byrnes, PO Jaffe, and four additional officers, identified as Police Officer Matthew Byrnes and Police Officer Jason Gammello of Police Service Area 2, and Police Officer Roni Jenkins and Police Officer Johnathan Epps of Police Service Area 4 (**Allegation D**). Officers then began searching the entrance area of the apartment, the living room, and the kitchen area with flashlights. Deputy Inspector Lance instructed PO Jaffe to fill out multiple Domestic Incident Reports and a Suspected Child Abuse or Maltreatment Report (**Board Review 1**).

While the officers were inside the apartment, § 87(2)(b) s § 87(2)(b) daughter, § 87(2)(b) left the apartment and § 87(2)(b) allegedly saw PO Jenkins stop § 87(2)(b) and search her bag (**Allegation E** and **Allegation F**). § 87(2)(b) then left the apartment and was stopped and frisked by Lt. Raimo as soon as he crossed from the apartment into the hallway (**Allegation G** and **Allegation H**). After the officers obtained the information of the parents of the minors in order to complete the aforementioned reports, § 87(2)(b) her § 87(2)(b) old daughter § 87(2)(b) s § 87(2)(b) old daughter daughter § 87(2)(b) and § 87(2)(b) exited the apartment. § 87(2)(b) and § 87(2)(b) were then stopped and frisked by PO Jenkins upon exiting the apartment (**Allegation I** and **Allegation J**). § 87(2)(b) then saw PO Jenkins open § 87(2)(b) and § 87(2)(b) s jackets and search their backpacks (**Allegation K**). PO Jenkins acknowledged searching § 87(2)(b) and § 87(2)(b) s bags as they were leaving the apartment (subsumed in **Allegation K**).

No individual was summonsed or arrested as a result of this incident. No firearms were recovered from § 87(2)(b). A few days after this incident, § 87(2)(b) and § 87(2)(b) were contacted by ACS to follow up on the referral made by the officers.

Due to the number of civilians and officer involved in this case, the investigation surpassed 90 days.

An attorney was consulted with for this case.

The investigation was able to obtain three videos of various portions of this incident recorded on personal cell phones. Snag it copies of the lead up to and the entry of § 87(2)(b) as well as the stop and frisk of § 87(2)(b) are embedded below. The full videos can be found in IA #23, IA #122, and IA #123.



Lead up to and entry of § 87(2)(b) mp4



Stop and frisk of § 87(2)(b) mp4

Mediation, Civil and Criminal Histories

- This complaint was ineligible for mediation due to the number of officers involved in this incident.
- As of April 27, 2017, a notice of claim has not been filed in regards to this incident (**Board Review 2**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 3**).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 8**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 9**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 10**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 11**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 12**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 13**).
- § 87(2)(b) [REDACTED] has no prior criminal convictions (**Board Review 14**).

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED] and § 87(2)(b)
have no prior CCRB complaints (**Board Review 16**).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
- Deputy Inspector Lance has been a member of the NYPD for 17 years and has five CCRB allegations pleaded against him involving two cases. Deputy Inspector Lance has

no substantiated prior allegations § 87(2)(g)

(see officer history).

- Lt. Raimo has been a member of the NYPD for 22 years and has one CCRB allegation pleaded against him involving one case. Lt. Raimo has no substantiated prior allegations § 87(2)(g) (see officer history).
- Lt. Birchwood has been a member of the NYPD for nine years and has 22 CCRB allegations pleaded against him involving eight cases. Lt. Birchwood has no substantiated prior allegations. Lt. Birchwood has one prior allegation of an Abuse of Authority – Premises entered and/or searched in case number 201606279 which was closed as exonerated (see officer history).

Findings and Recommendations

Subject Officer Identification

- Lt. Birchwood acknowledged placing his foot in the door jam and pushing the apartment door open before entering the apartment. Therefore, Allegation A is pleaded against Lt. Birchwood.
- Lt. Raimo testified that he was present for the stop and frisk of the male individuals, identified by the investigation to be § 87(2)(b) and § 87(2)(b) by officers as they were leaving § 87(2)(b). Lt. Raimo also acknowledged directing officers to stop, frisk, and search all the individuals leaving § 87(2)(b). Therefore, Allegation B and Allegation C have been pleaded against Lt. Raimo.
- It is not in dispute that Deputy Inspector Lance was standing by the entrance to § 87(2)(b) § 87(2)(g). Additionally, after Lt. Birchwood entered the apartment, Deputy Inspector Lance entered immediately after him and walked the furthest into the apartment. Deputy Inspector Lance was inside the apartment when the other officers entered and searched the living room and kitchen. The search of § 87(2)(b) is shown in the full video located in IA #23. Therefore, Allegation D has been pleaded against Deputy Inspector Lance.
- § 87(2)(b) described the officer who stopped and frisked him upon exiting after the officers had entered the apartment as being a § 87(2)(b) male in § 87(2)(b) and was wearing a “police hat”. Lt. Raimo is a § 87(2)(b). Lt. Raimo testified that he stopped and frisked some of the black male individuals leaving § 87(2)(b) however, he could not identify the individuals he stopped and frisked further than their gender and race. Deputy Inspector Lance and Lt. Raimo were the only two officers described to be wearing “police hats” on January 1, 2017 and § 87(2)(b) described the officer who was speaking to the individuals at the door with Lt. Birchwood, whom the investigation identified to be Deputy Inspector Lance, to look significantly different from Lt. Raimo. Based on § 87(2)(b)’s description of Lt. Raimo and the fact that Lt. Raimo admitted to stopping and frisking individuals

leaving the apartment, Allegation G and Allegation H have been pleaded against Deputy Inspector Lance.

- Lt. Raimo testified that he instructed PO Jenkins to stop § 87(2)(b) and § 87(2)(b). He also instructed PO Jenkins to frisk § 87(2)(b) and § 87(2)(b) and search § 87(2)(b) and § 87(2)(b). PO Jenkins corroborated that Lt. Raimo instructed her to stop, frisk, and search the aforementioned individuals. Therefore, Allegations I, J, and K have been pleaded against Lt. Raimo.
- The investigation determined that Deputy Inspector Lance was in a position to know about and therefore supervise the officers conducting the stops, frisk, and searches of § 87(2)(b) and § 87(2)(b). Therefore, Allegations L, M, and N have been pleaded against Deputy Inspector Lance.

Allegations Not Pleaded

Discourtesy: An officer acted discourteously towards § 87(2)(b)

On January 1, 2017, § 87(2)(b) filed a complaint with the CCRB alleging that he was stopped and frisked by an officer upon leaving his friend's apartment in the lobby of § 87(2)(b) in Brooklyn. During his phone statement to the CCRB, § 87(2)(b) confirmed the above allegations and also alleged that, when he took out his cell phone and told the officers that he was going to call his lawyer, a second officer swatted § 87(2)(b)'s cell phone out of his hand and onto the ground. However, the investigation was unable to obtain a verified statement from § 87(2)(b). While § 87(2)(b) alleged that he saw an officer stop and frisk § 87(2)(b), none of the other victims who provided a verified statement alleged seeing an officer swat § 87(2)(b)'s phone out of his hand and onto the ground. Therefore, § 87(2)(b)'s allegation that an officer swatted his phone out of his hand has not been pleaded.

Allegation A – Abuse of Authority: Lieutenant Omar Birchwood entered § 87(2)(b) in Brooklyn.

Allegation D – Abuse of Authority: Deputy Inspector Jesse Lance entered and searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that officers entered her apartment after gunshots were fired outside of her building, located at § 87(2)(b) in Brooklyn on January 1, 2017 (**Board Review 18**). When officers knocked on her door at approximately 1:10 a.m., the officers instructed § 87(2)(b) to break up the party going on inside because they had information that there were firearms inside her apartment. § 87(2)(b) saw an officer, identified by the investigation to be Lt. Birchwood, put his foot over the threshold of her apartment door immediately after the door was opened. § 87(2)(b) and § 87(2)(b) all requested Lt. Birchwood to remove his foot from the door and told the officers they could come into the apartment if they obtained a warrant. Lt. Birchwood did not remove his foot from the threshold of the apartment prior to entering it. § 87(2)(b) instructed all of the individuals who were not family members to leave the apartment. Multiple groups of individuals exited the apartment at various points. After the first group of individuals left the apartment, § 87(2)(b) told Deputy Inspector Lance and Lt. Birchwood that there were children in the apartment.

After § 87(2)(b) and § 87(2)(b) spoke to the officers for over ten minutes at the door after the first group of individuals left the apartment, § 87(2)(b) attempted to close the door on the officers. At that time, Lt. Birchwood pushed back against the door and entered into the apartment. He was followed by Deputy Inspector Lance, PO Jaffe, PO Gammello, PO Byrnes, and PO Jenkins. PO Jaffe, PO Byrnes, and PO Jenkins then began to look around living room and kitchen area of the apartment with their flashlights. Deputy Inspector Lance continued to ask § 87(2)(b) and § 87(2)(b) to see the children, who were ultimately brought to the front of the apartment. No weapons or other contraband was recovered from the apartment. § 87(2)(b) and § 87(2)(b)'s statements were consistent with § 87(2)(b)'s. Additionally, their statements were corroborated by the cell phone video footage taken during the incident which can be seen below.



Lead up to and entry of § 87(2)(b) mp4

Lt. Birchwood testified that when PO Jaffe, PO Firth, and he responded to the shot spotter activated outside of § 87(2)(b) at 12:30 a.m., he saw a group of black male individuals standing in the lobby drinking, including one individual wearing a green jacket in the lobby of § 87(2)(b) tuck what he believed to be a firearm into his waist band (**Board Review 19**). Lt. Birchwood stated that he observed the male individual in the green jacket tuck the firearm into his waistband through the glass entrance doors of the building from his police car, approximately five car lengths away from the lobby of § 87(2)(b). When asked to describe the firearm, Lt. Birchwood was unable to provide any description of the firearm or why he believed the male individual was tucking a firearm, and not another object, into his waistband. Lt. Birchwood and the officers approached the individuals in the lobby; however, the individuals walked away from them and into § 87(2)(b). The individuals who had been in the lobby then came to the door and explained that they had just been drinking. Lt. Birchwood and the other officers then left the building. When asked why he left the building, Lt. Birchwood stated that he did not want to summons the male individuals for drinking in the lobby on New Year's Eve. He did not request for the male individual in the green jacket, whom he believed was carrying a firearm, to come out of the apartment. When asked why he did not request any information about the male individual in the green jacket while at the door, Lt. Birchwood stated that he did not know.

In his statement to the CCRB, PO Frith stated that when PO Jaffe, Lt. Birchwood, and he were entering the lobby of § 87(2)(b) after responding to the shot spotter activation, PO Jaffe yelled "gun" and the officers pursued the group of males from the lobby to the door of § 87(2)(b) (**Board Review 20**). The officers had a conversation with the individuals at the door about the male individual with the firearm and the officers requested him to come out of the apartment.

When the male individual did not come out, the officers left the building. When asked what he observed in the lobby of § 87(2)(b) when the officers responded to the shot spotter activation, PO Jaffe testified that he saw a group of male individuals drinking in the lobby and that the officers pursued them to the door of § 87(2)(b) knocked, and then left the building when there was no answer at the door (**Board Review 21**).

Lt. Birchwood returned to § 87(2)(b) at approximately 1:10 a.m. after the officers received a call from Lt. Raimo § 87(2)(e), § 87(2)(f). When speaking to the individuals at the door the second time, Lt. Birchwood did not request for the male individual in the green jacket to come to the door and he did not ask any of the individuals who were leaving the apartment, including § 87(2)(b) whom he testified he spoke to in the lobby, if they had seen an individual inside the apartment with a firearm. Lt. Birchwood testified that he placed his foot on the threshold of § 87(2)(b) as soon as the door was opened to prevent it from being closed on him. He did so because the officers learned there were children in the apartment and they were conducting an investigation into their welfare. Lt. Birchwood stated he was concerned for the welfare of the children because there had been shots fired outside of the building earlier that evening and the officers had received a tip from a confidential informant that there were two firearms inside the apartment. Lt. Birchwood could not see or hear the children inside the apartment from where he was standing at the door and he had no other reason to fear for their welfare.

Deputy Inspector Lance testified that when he arrived in the lobby of § 87(2)(b) he immediately spoke to Lt. Raimo who told him that he had received a call from Sergeant Joseph Jette, a Field Intelligence Sergeant from the Brooklyn Intelligence Criminal Section (**Board Review 22**). Sgt. Jette told Lt. Raimo that § 87(2)(e), § 87(2)(f). Deputy Inspector Lance believed Lt. Raimo had provided him with a description of the individual with the firearms, § 87(2)(e)

Lt. Raimo stated that Sgt. Jette told him there were two firearms inside § 87(2)(b) and that police had just responded to the building in regards to gunshots being fired outside. However, Lt. Raimo testified that Sgt. Jette did not explicitly state that § 87(2)(e)

(**Board Review 23**). Lt. Raimo testified that no description of the individual who had the firearms was communicated to him or any other officer. Lt. Raimo also instructed Deputy Inspector Lance that he was familiar with § 87(2)(b) from § 87(2)(b)

Deputy Inspector Lance spoke to Lt. Birchwood before he approached the door of § 87(2)(b) but did not recall the content of the conversation or whether Lt. Birchwood had told him that he had seen what he believed to be an armed black male individual run into the apartment. During the 20 minutes that he and the other officers were at the door, Deputy Inspector Lance did not recall specifically whether officers asked the individuals at the door questions about the alleged firearms inside the apartment, although, he stated that he was “sure it was a topic of conversation.” At some point during the conversation at the door, § 87(2)(b) stated that there were no guns inside the apartment because there were children present. Upon learning there were children inside the apartment, he immediately became concerned for their wellbeing. When asked why he was concerned for the wellbeing of the children, Deputy Inspector Lance stated that he was concerned because shots had been fired outside the building § 87(2)(e)

§ 87(2)(e), § 87(2)(f), the apartment had a history of violence, he could smell marijuana emanating from the apartment, he could see individuals inside the apartment drinking alcohol, and because there was an individual inside the apartment, identified by the investigation to be § 87(2)(b) wearing a parole ankle bracelet. When asked if he inquired about the reason for § 87(2)(b)'s parole ankle bracelet, Deputy Inspector Lance stated that he did not inquire about what § 87(2)(b) was on parole for. Deputy Inspector Lance did not recall specifically asking any individual who was leaving the apartment whether they had any information about the shots fired or alleged firearms.

Deputy Inspector Lance did not recall if consent to enter the apartment was requested by the officers, and he acknowledged that he did not attempt to obtain a warrant to enter the apartment, and that he did not have any discussion with the other officers about freezing the apartment. From what Deputy Inspector Lance could see, the apartment was in fair condition and he did not see or hear children in distress inside the apartment before the officers entered. Deputy Inspector Lance and the other officers requested to see the children multiple times and the children were never brought to the door. When § 87(2)(b) attempted to close the door, Lt. Birchwood pushed the door open and subsequently entered the apartment. Deputy Inspector Lance did not see Lt. Birchwood place his foot in the door until § 87(2)(b) attempted to close the door on the officers. When asked why the officers did not enter the apartment immediately upon learning of the presence of children if the officers feared for their wellbeing, Deputy Inspector Lance stated that he did not want to escalate what was already a tense situation at the door.

Deputy Inspector Lance did not instruct Lt. Birchwood to enter the apartment when § 87(2)(b) attempted to close the door and testified that he did not have enough time to instruct him to enter the apartment. He did not instruct Lt. Birchwood to leave the apartment immediately after he entered and he proceeded to follow Lt. Birchwood into the apartment. Deputy Inspector Lance went to the area of the living room to the left of the kitchen, and while he was the officer standing the deepest into the apartment, he did not search the apartment for the children. In fact, he denied that a search of the apartment was conducted after the officers entered at all. When asked why he did not search for the children to determine if they were safe immediately upon entering the apartment, Deputy Inspector Lance stated that the occupants were using profanity toward the officers and raising objections to the officers entering the apartment, and therefore he did not believe it would have been safe for the officers or civilians for him to have gone to the back of the apartment to search for the children. When asked why he did not conduct a search of the apartment for the alleged firearms, Deputy Inspector Lance stated that he would have needed a search warrant to search the apartment and, at that time, he did not believe that he had enough information from § 87(2)(e), § 87(2)(f) to draw up a search warrant. The officers did not receive any additional information regarding the presence of firearms inside the apartment, or lack thereof, once inside § 87(2)(b).

In People v. Cruz, 545 N.Y.S.2d 561, 1989, the court found that the informant, who provided information about the defendants criminal history to the officers, did not indicate the basis for his knowledge and that the police officer did not undertake any independent investigation to corroborate the informants' tip (**Board Review 24**). Therefore, the court held that the police officer's conversation with the informant did not provide probable cause for entry into the apartment occupied by the defendant.

In People v. Mormon 954 N.Y.S.2d 152, 2012, the court held that the People failed to meet their burden of justifying the warrantless search and seizure under the emergency doctrine exception to the warrant requirement because the warrantless entry and ensuing search, which occurred at least 45 minutes after the police arrived and almost two hours after the time of the alleged shooting, were conducted after a minimal police investigation which failed to establish that any children were in imminent danger (**Board Review 25**). In this case, while investigating the report of a shooting, a neighbor informed the detective that she believed she had heard a gunshot and the defendant lived with his girlfriend and their children. Officers entered the defendant's residence to search for the children, whose location was unknown, and recovered physical evidence.

In People v. Garrett 682 N.Y.S.2d 441, 1998, the court reversed the judgments against the defendants in the warrantless search of the apartment, where guns and rifles were found, based on the determination that the search was not justified by the emergency exception to the warrant requirement because there was minimal investigation conducted and there was no indication that children were in danger (**Board Review 26**).

In People v. Thatcher 779 N.Y.S.2d 818, 2004, the court ruled that the officers properly entered the home under the emergency exception to the warrant requirement (**Board Review 27**). The officers were advised of an ongoing domestic dispute involving a gun and children at the defendant's home. The police found the front door ajar during the winter, signs of disturbance, and had no response to their announced presence. The sole motivation for the warrantless entry was to protect life and property.

As previously discussed, Lt. Birchwood was unable to articulate specifically why he believed that the black male individual wearing the green jacket he saw from his car in the lobby of the building was armed. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

When Lt. Birchwood and Deputy Inspector Lance first arrived at the door of § 87(2)(b) they were not aware of the fact that there were children inside the apartment. Lt. Birchwood was not told that there were children inside the apartment until approximately five minutes after placing his foot over the threshold of the door. Deputy Inspector Lance and Lt. Birchwood testified that they did not see any individual inside the apartment, including children, in distress. While they observed alcohol and people consuming alcohol inside the apartment, they did not see anyone smoking marijuana or using any other illicit drugs.

The officers did not obtain a warrant to enter § 87(2)(b) freeze the apartment to prevent anyone from leaving while they attempted to retrieve a warrant, or receive consent to enter before Lt. Birchwood entered the apartment. Deputy Inspector Lance and Lt. Birchwood did not enter the apartment until § 87(2)(b) attempted to close the apartment door on Lt. Birchwood. The video of the entry embedded above shows Lt. Birchwood debating his education level and income with § 87(2)(b) in a clam tone of voice at the door after finding out that children were inside the apartment. When asked why the officers did not enter immediately upon learning there were children inside the apartment, Deputy Inspector Lance was unable to provide any justification except for the fact that the officers ultimately did enter and confirm the children were safe.

§ 87(2)(g)
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After the children were produced, Deputy Inspector Lance quickly determined that they were in good condition and conducted no further investigation into the welfare of the children.

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Allegation B – Abuse of Authority: Lieutenant Michael Raimo authorized the stop of

§ 87(2)(b) and § 87(2)(b)

Allegation C – Abuse of Authority: Lieutenant Michael Raimo authorized the frisk of

§ 87(2)(b) Moutlrie, § 87(2)(b) and § 87(2)(b)

Allegation G – Abuse of Authority: Lieutenant Michael Raimo stopped § 87(2)(b)

Allegation H – Abuse of Authority: Lieutenant Michael Raimo frisked § 87(2)(b)

During her statement to the CCRB, § 87(2)(b) alleged that everyone she saw leave her apartment after the officers arrived at her apartment door was stopped and frisked by officers. She also alleged that the officers told her that they had information that a black male in a green jacket had come into the apartment with a firearm.

During his statement to the CCRB, § 87(2)(b) alleged that his friends, § 87(2)(b) and § 87(2)(b) were stopped and frisked upon exiting by two officers in the hallway outside of § 87(2)(b) (Board Review 28). § 87(2)(b) stated that his friends were stopped immediately after exiting § 87(2)(b) into the hallway, and that officers patted down each of their waists, jacket pockets, upper legs, arms, and groin area. § 87(2)(b) also alleged that when he left his apartment after the officers entered the apartment, he was stopped and frisked around his waistband, upper legs, arms, and pant pockets by Lt. Raimo.

PO Byrnes testified that he stopped four male individuals, § 87(2)(b) and § 87(2)(b) as they were leaving § 87(2)(b) (Board Review 29). He noted stopping these individuals in his memo book and prepared Stop, Question and Frisk reports detailing that they were stopped and frisked because they were suspected of concealing a weapon (Board Review 30 and Board Review 31). PO Byrnes stated that he did not recall frisking any individuals leaving the apartment. When asked why he stopped § 87(2)(b) and § 87(2)(b) PO Byrnes stated that he stopped them because they were leaving an apartment inside of which the officer believed were two firearms and because shots had been fired outside the building earlier that night. PO Byrnes testified that no individual he saw leaving the apartment seemed armed or was wearing a green jacket.

Lt. Raimo testified that he and other officers stopped all the male individuals leaving § 87(2)(b) and asked for their identification, which the male individuals provided to the officers. Lt. Raimo stated that the male individuals were also patted down around their waists and their jacket pockets. Nothing was recovered from any of these individuals and no one was wearing a green jacket. Lt. Raimo testified that the individuals were frisked to “make sure they were not leaving with a firearm”. Lt. Raimo further stated, “The purpose was also to make sure I’m safe and the other officers are safe and to make sure I don’t get shot in the back.” Lt. Raimo did not provide any other reason as to why the officers stopped and frisked the male individuals. When asked if anyone leaving the apartment appeared armed, Lt. Raimo stated that no one appeared armed but stated, “Anyone of them could have been. You’d be amazed where people hide guns.” No other officer admitted to stopping or frisking any of the male individuals leaving the apartment. Lt. Raimo acknowledged stopping and frisking the first few individuals that left and that he did not stop the other officers from stopping and frisking individuals as they were leaving. Lt. Raimo testified that he was the highest ranking officer participating in the stops and frisks.

Lt. Birchwood testified that, earlier in the evening, he had observed a black male individual wearing a green jacket tuck what he believed to be a firearm into his waistband; however, when asked to describe the black male and the firearm further, he was unable to § 87(2)(g)

§ 87(2)(b) Lt. Birchwood confirmed that some of the individuals leaving § 87(2)(b) were stopped and frisked by officers. Deputy Inspector Lance testified that he did not see any of the male individuals leaving the apartment before officers entered be stopped and frisked by officers. When asked why the individuals leaving the apartment with suspected firearms inside were not stopped and frisked upon exiting, Deputy Inspector Lance stated, “Well, you know, we didn’t have enough information, you know, to corroborate the stops and so on and so forth.” However, based on Lt. Raimo and Lt.

Birchwood's testimonies, it is not in dispute that the male individuals leaving the apartment were stopped and frisked.

In People v. Benjamin 51 N.Y.2d 267, 1980, the court reversed and remanded the decision, holding that, while a radio report concerning the presence of men with guns did not justify intrusive police action, the report, when considered in conjunction with information police acquired by observation at the scene, provided the reasonable suspicion necessary to justify the stop and frisk (**Board Review 32**). In this case, the defendant's evasive and simultaneously furtive conduct of backing away from the police as he reached toward the waistband of his trousers gave rise to a reasonable suspicion the he was armed.

In People v. Cabrera 629 N.Y.S2d 390, 1995, the court reserved the lower court's decision and decided that a radio message of anonymous origin, consisting only of "shots fired...four male Hispanics" at a particular location, justified no more than a common-law right of inquiry (**Board Review 33**).

In People v. De Bour 40 N.Y.2d 210, 1976, the court affirmed defendant one's conviction for attempted possession of a weapon where the stop was lawful and the subsequent frisk was reasonably limited in scope and intensity based on the officer noticing a slight waist-high bulge and asking the defendant to unzip his coat (**Board Review 34**). In the second case, the court reversed defendant two's conviction for attempted possession of a weapon because the anonymous tip for a black male in a red shirt, leading them to defendant two at a bar, with no additional factors, was insufficient cause to sustain a frisk.

In Florida v. J.L. 529 U.S. 266, 2000, the court affirmed a judgement holding that the stop, frisk, and search of the respondent based only on an anonymous tip was constitutionally invalid since an anonymous tip that a person was carrying a gun was, without more investigation, insufficient to justify a police officer's stop and frisk of that person (**Board Review 35**).

§ 87(2)(e), § 87(2)(f)

No description of the individual with the firearms was provided. Although, Lt. Birchwood allegedly saw a black male individual wearing a green jacket tuck a firearm into his waistband, he was unable to provide more identifying information for this individual aside from his race and one article of clothing. § 87(2)(g)

No officer observed a bulge on any individual leaving § 87(2)(b) and Lt. Raimo was unable to provide any additional reason for frisking the individuals leaving the apartment aside from the officers' belief that there were firearms inside. § 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: Lieutenant Michael Raimo authorized the stop of

§ 87(2)(b)

Allegation F – Abuse of Authority: Lieutenant Michael Raimo authorized the search of

§ 87(2)(b)

Allegation I – Abuse of Authority: Lieutenant Michael Raimo authorized the stop of

§ 87(2)(b)

and § 87(2)(b)

Allegation J – Abuse of Authority: Lieutenant Michael Raimo authorized the frisk of

§ 87(2)(b)

and § 87(2)(b)

Allegation K – Abuse of Authority: Lieutenant Michael Raimo authorized the search of

§ 87(2)(b)

and § 87(2)(b)

§ 87(2)(b) alleged that PO Jenkins stopped his daughter, § 87(2)(b) as she was exiting the apartment after the officers had entered. He stated that he saw PO Jenkins open § 87(2)(b)'s tote bag and look inside to make sure she was not carrying a firearm.

During her statement to the CCRB, § 87(2)(b) alleged that she was stopped and frisked by PO Jenkins upon exiting the apartment. She also alleged that her daughter, § 87(2)(b) and § 87(2)(b)'s daughter, § 87(2)(b) were stopped and their backpacks were searched by PO Jenkins (**Board Review 36**). § 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) exited behind her and they told her later they were stopped and frisked by PO Jenkins when they left the apartment. § 87(2)(b) did not see § 87(2)(b) and § 87(2)(b) get stopped and frisked by PO Jenkins because she immediately walked into the lobby. § 87(2)(b) stated she was wearing a black puffy jacket. She testified that § 87(2)(b) and § 87(2)(b) were wearing skin-tight body suits, jackets, and were carrying small bags. The stop and frisk of § 87(2)(b) by PO Jenkins is shown in the video embedded below. Lt. Raimo is shown in the video standing behind PO Jenkins as she conducts the stop and frisk of § 87(2)(b).



Stop and frisk of § 87(2)(b) .mp4

During her statement to the CCRB, PO Jenkins stated that she stopped and frisked three female individuals, determined by the investigation to be § 87(2)(b) and § 87(2)(b) leaving § 87(2)(b) after the officers entered the apartment (**Board Review 37**). She stated that one of the female individuals, identified to be § 87(2)(b) was wearing a black puffy jacket and two of the female individuals, identified to be § 87(2)(b) and § 87(2)(b) were wearing skin-tight black body suits. She stated that she patted them down around the waist and lower back and looked inside of their bags as they were leaving. PO Jenkins denied searching the children's backpacks as they were leaving. She stated she was directed to stop, frisk, and search all the adult female individuals leaving the apartment by Lt. Raimo, who was standing next to her while she conducted the stops, frisks, and searches.

Deputy Inspector Lance testified that he saw PO Jenkins look inside one of the female individual's bag as she was leaving the apartment. He stated that he either told PO Jenkins to let

the female individual leave or made a gesture indicating to PO Jenkins that the female individual could leave. He did not see PO Jenkins stop, frisk, or search any of the other female individuals or children leaving the apartment. No other officer testified that they saw female individuals being stopped, frisked, and searched upon exiting the apartment.

Lt. Raimo testified that the children leaving the apartment with backpacks were stopped by PO Jenkins. The children were instructed to open their backpacks and PO Jenkins looked inside to see if they were carrying a firearm. Therefore, the search of § 87(2)(b) and § 87(2)(b)'s back pack is not in dispute. Lt. Raimo stated that all of the adult individuals leaving the apartment with children were stopped and patted down by officers. None of the adult individuals' bags were searched as they were leaving the apartment. When asked why he directed PO Jenkins to stop, pat down, and search the adult individuals and children leaving the apartment, Lt. Raimo stated, "Because of a firearm." He gave no other reason for directing PO Jenkins to carry out the stops, frisks, and searches.

In People v. Benjamin 51 N.Y.2d 267, 1980, the court reversed and remanded the decision, holding that, while a radio report concerning the presence of men with guns did not justify intrusive police action, the report, when considered in conjunction with information police acquired by observation at the scene, provided the reasonable suspicion necessary to justify the stop and frisk (**Board Review 32**). In this case, the defendant's evasive and simultaneously furtive conduct of backing away from the police as he reached toward the waistband of his trousers gave rise to a reasonable suspicion the he was armed.

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§ 87(2)(g)

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§ 87(4-b), § 87(2)(g)

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Squad: **9**

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Reviewer:	_____	_____	_____
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